

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**DAVID C. McLEAN, ET AL.,
RESPONDENTS
vs.**

**FIRST HORIZON HOME LOAN, CORPORATION (F/K/A McGUIRE MORTGAGE
COMPANY,)
APPELLANT**

DOCKET NUMBER WD74025

DATE: JUNE 26, 2012

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Vernon E. Scoville, III, Judge

Appellate Judges:

Division Two: Gary D. Witt, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Attorneys:

R. Frederick Walters, for Respondents

Thomas M. Hefferon, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DAVID McLEAN, ET AL., RESPONDENTS

v.

**FIRST HORIZON HOME LOAN, CORPORATION (F/K/A McGUIRE MORTGAGE
COMPANY, APPELLANT**

WD74025

Jackson County, Missouri

Before Division Two Judges: Gary D. Witt, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

First Horizon Loan Corporation appeals from the denial of its motion for entry of satisfaction of judgment and an award of attorney's fees entered in favor of counsel representing the plaintiff class in this matter.

AFFIRMED.

Division Two holds:

(1) Even if an order of satisfaction was warranted under the undisputed evidence, as asserted by First Horizon, the circuit court was not required to enter an order of satisfaction prior to the resolution of Class Counsel's motion requesting sanctions. Furthermore, even assuming *arguendo* that First Horizon's motion should not have been denied and should still be pending, we do not perceive of sufficient prejudice to warrant reversal as the court made the motion could be re-filed and would be granted after the attorney's fee award had been paid.

(2) A trial court has the inherent power to sanction bad faith conduct, probably by way of awarding attorney's fees, but may only do so where the sanctioned party acted in bad faith. A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees.

(3) The existence of sanctioning schemes established by rule or statute does not displace the inherent power of the court to impose sanctions for bad faith conduct. Furthermore, sanctions may be imposed years after a judgment on the merits.

(4) In granting Class Counsel's motion requesting sanctions based upon First Horizon's bad faith, the trial court was clearly awarding attorney's fees as

sanctions under its inherent power. The absence of the word “sanctions” from the order granting the motion was not dispositive of that issue.

(5) The parties could not divest the trial court of its inherent powers by agreement, and the trial court did not, and could not have, abdicated its inherent powers, especially with regard to bad faith actions taken subsequent to the entry of judgment.

(6) Given the unusual circumstances presented herein, where counsel in a class action suit has been named as a party to a settlement agreement incorporated into the trial court’s judgment, counsel has effectively been made party to the judgment and, having suffered damages as result of the bad faith of the defendant, possesses a sufficient interest in the enforcement of the judgment to give counsel standing to pursue sanctions.

Opinion by Joseph M. Ellis, Judge

Date: June 26, 2012

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